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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,899	02/05/2004	Steven Ginsberg	PC20008A	5352

7590 04/22/2005

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EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,899

Applicant(s)

GINSBERG ET AL.

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/24/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-33 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Niwa (5,613,779) in view of Leung et al. (6,596,298; hereinafter Leung'298) or Robertson (6,516,950) and Romick (3,826,222) or Klatt (2003/0136698). Niwa discloses a packaged supply of individual doses comprising a packet (104, Figure 4) having a pouch portion (on one side of a tear-facilitating means, 5b) that holds a single dose of the personal care product, a tab portion (on an opposite side of the tear-facilitating means, 5a) releasably connected to the pouch portion and the pouch portion having a front edge remote from the tab portion (5b). The front edge of the packet can be gripped to separate the pouch portion from the tab portion.

As to claim 22, Niwa also discloses the other limitations of the claim except for at least two packets/plurality packets being uniformly stacked in a non-staggered arrangement and the personal care product being a film dosage form. Leung'298 teaches a single dose of a personal care product is in a film dosage form. Robertson shows a credit card-sized package (10) of individual doses of a personal care product in wafer form/film form comprising a tray (12) for holding a medicament wafer and a cover (48) for closing the tray. Romick teaches a packaged supply of individual doses of a personal care product comprising a box (20) having a tray (lower portion) and a lid and a plurality of substantially identical packets (25) uniformly stacked in a

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non-staggered arrangement within the box for shipping. Klatt suggests a packaged supply of individual doses of a personal care product comprising a box (1) and a plurality of substantially identical packets (5) uniformly stacked in a non-staggered arrangement within the box. It would have been obvious to one having ordinary skill in the art in view of Leung'298 or Robertson and Romick or Klatt to modify the packaged supply of individual doses of Niwa so the personal care product comprises a film dosage form as taught by Leung'298 or Robertson to reduce the thickness of the packets and for fast dissolving and the packaged supply comprises a plurality packets uniformly stacked in a non-staggered arrangement as taught by Romick or Klatt for better packaging.

As to claim 21 or 33, the packaged supply of Niwa as modified further fails to show a tray/container for holding a stacked of identical packets. It would have been obvious to one having ordinary skill in the art in view of Robertson or Romick to modify the packaged supply so it includes a tray for holding the stacked of identical packets for better protecting the packets during shipping and/or handling.

As to claims 23-27, Niwa discloses the packet comprises two flexible sheets (103a, 103b) laminated together so as to define a closed pocket between the sheets and at least one tear-facilitating means (1-3) to form a tear line.

As to claims 28-30, Niwa as modified further fails to show the front edge of each pouch portion comprises second tear-facilitating means, it would have been obvious to one having ordinary

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skill in the art in view of Niwa as modified so the front edge of each packet includes second tear-facilitating means similar to the tear facilitating means (1-3) to provide more convenience for the user and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

3. Claim 34 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 33 above, and further in view of Velch (5,630,546). Niwa further fails to show the container comprises a fixed cover and a movable cover. Velch teaches a container (6) comprising a tray (20), a fixed cover (28) that covers one end of the container and a movable cover (38) hingedly connected to the container. It would have been obvious to one having ordinary skill in the art in view of Velch to modify the packaged of Niwa as modified so the cover comprises a fixed cover and a movable cover to prevent the packets from falling out of the container.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 21-34 are finally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,708,826.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the structural limitations in the claims of the instant patent application are fully disclosed by the patents.

Response to Arguments

Applicant's arguments with respect to 2/22/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
April 17, 2005



Luan K. Bui
Primary Examiner